

1
2
3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 SHANA LEE MCCART-POLLAK,

7 Plaintiff,

8 v.

9 EDWARD ETKIN, et al.,

10 Defendants.
11

Case No. 2:17-cv-00042-RFB-CWH

ORDER

12 Presently before the court is defendants Edward Etkin and Law Office of Edward Etkin,
13 Esq. PC's (together, "Etkin" or defendants) motion for attorney's fees (ECF No. 66), filed
14 December 22, 2017. Plaintiff Shana Lee McCart-Pollack filed a response and counter-motion to
15 extend time for payment (ECF Nos. 71, 72) on January 8, 2018. Defendants filed a reply in
16 support of their motion and a response to the counter-motion (ECF Nos. 73, 74) on January 9,
17 2018. McCart-Pollack filed a reply in support of her counter-motion (ECF No. 76) on January 19,
18 2018. Defendants move for a determination of attorney's fees awarded at the hearing held on
19 December 8, 2017. (Mins. of Proceedings (ECF No. 64).)

20 **I. BACKGROUND**

21 This attorney malpractice action arises from a dispute regarding the handling of McCart-
22 Pollack's patent and trademark case. Plaintiff alleges that by mishandling her pending patent and
23 trademark application, her attorney caused her to suffer various damages. (Compl. (ECF No.1).)
24 In preparation for trial, defendants moved to compel discovery, and for sanctions. (Mot. to
25 Compel (ECF No. 23).) At a hearing on December 8, 2017, the court granted the motion and
26 sanctions of attorney's fees and ordered the parties to meet and confer regarding the amount of
27 fees and costs. (Mins. of Proceedings (ECF No. 64).) Because the parties were unable to resolve
28

1 the dispute regarding the amount of fees, defendants moved for a determination of the amount of
2 attorney's fees. Defendants seek attorney's fees in the amount of \$2,860.00.

3 McCart-Pollack does not contest the reasonableness of the fees, but desires to extend the
4 time, until the end of the case, to pay the fees. (ECF Nod. 71,72). She argues that defense
5 counsel has already been paid by Etkin, except for \$100 which she offers to pay now, so counsel
6 has been made whole. She further argues that she has a claim against Etkin for \$5,000 which she
7 believes she will win at the end of the case. She also argues that she did not act in bad faith, she
8 is a pro se litigant, and she restates her arguments made at the hearing regarding the merits of the
9 motion to compel. Etkin replies that the purpose of the attorney's fees is to make the defendants
10 whole, and that Etkin had to pay his lawyer \$2,860 to compel discovery in order to defend the
11 case and prepare for trial. Etkin further argues that he is entitled to prompt payment, and that any
12 dispute regarding the ultimate outcome of the case must wait until the case is resolved.

13 **II. ANALYSIS**

14 The court should only award attorney's fees that it deems reasonable. *Moreno v. City of*
15 *Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). The lodestar method is the customary method
16 that the court uses when determining attorney's fees. *Morales v. City of San Rafael*, 96 F.3d 359,
17 363 (9th Cir. 1996). "The 'lodestar' is calculated by multiplying the number of hours the
18 prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Id.*; *see also*
19 *McGrath v. County of Nevada*, 67 F.3d 248, 252 (9th Cir. 1995). The requesting party "has the
20 burden of submitting billing records to establish that the number of hours it has requested are
21 reasonable." *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013). The court
22 should exclude from the lodestar calculation hours that were not "reasonably expended,"
23 including hours that are "excessive, redundant, or otherwise unnecessary." *Hensley v. Eckerhart*,
24 461 U.S. 424, 434 (1983); *see also Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006).
25 If the court determines some requested fees should be excluded as unreasonable, the court may
26 exclude bill entries pursuant to an hour-by-hour analysis. *Gonzalez*, 729 F.3d at 1203.

27 The lodestar amount is a presumptively reasonable fee. *Camacho v. Bridgeport*
28 *Financial, Inc.*, 523 F.3d 973, 982 (9th Cir. 2008). Although presumptively reasonable, the court

1 may adjust the lodestar amount based on the *Kerr* factors¹ to account for factors that have not
2 been subsumed in the lodestar calculation. *Id.* “The number of hours to be compensated is
3 calculated by considering whether, in light of the circumstances, the time could reasonably have
4 been billed to a private client.” *Moreno*, 534 F.3d at 1111.

5 Furthermore, Local Rule 54-14(b) requires a party seeking attorney’s fees to include (1) a
6 reasonable itemization and description of the work performed and (2) an itemization of all costs
7 sought to be charged as part of the fee award.²

8 **A. Reasonable Hourly Rate**

9 The court determines a reasonable hourly rate by reference to the “prevailing market rates
10 in the relevant community” for an attorney of similar experience, skill, and reputation. *Gonzalez*,
11 729 F.3d at 1205 (quotation omitted). The relevant community generally is “the forum in which
12 the district court sits.” *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010)
13 (quotation omitted). The party seeking fees bears the burden of producing satisfactory evidence
14 to justify the requested rate. *Gonzalez*, 729 F.3d at 1206.

15 Here, the hourly rates on the billing record submitted by defendants’ attorneys is \$200.00.
16 McCart-Pollack did not object to the reasonableness of the rates, and the court finds this rate to be
17 reasonable for this forum.

21 ¹ The *Kerr* factors include:

22 (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3)
23 the skill requisite to perform the legal service properly, (4) the preclusion of other
24 employment by the attorney due to acceptance of the case, (5) the customary fee, (6)
25 whether the fee is fixed or contingent, (7) time limitations imposed by the client or the
26 circumstances, (8) the amount involved and the results obtained, (9) the experience,
27 reputation, and ability of the attorneys, (10) the ‘undesirability’ of the case, (11) the nature
28 and length of the professional relationship with the client, and (12) awards in similar
cases.

Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975).

² Local Rule 54-14(b) imposes additional requirements on a motion for attorney’s fees, however,
since McCart-Pollack focused her arguments only the timing of payment of attorney’s fees, the court does
not address the rest of the requirements imposed by LR 54-14(b).

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5

6

7
8
9
0
1
2
3
4
5
6
7

8

9
2021
2223
24

5

26
27
28